

105TH CONGRESS  
1ST SESSION

# S. 258

To improve price discovery in milk and dairy markets by reducing the effects of the National Cheese Exchange on the basic formula price established under milk marketing orders, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1997

Mr. FEINGOLD (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To improve price discovery in milk and dairy markets by reducing the effects of the National Cheese Exchange on the basic formula price established under milk marketing orders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Milk Price Discovery  
5 Improvement Act of 1997”.

### 6 **SEC. 2. FINDINGS.**

7 Congress finds that—



1           (1) the National Cheese Exchange, located in  
2           Green Bay, Wisconsin, is the only cash market for  
3           bulk cheese in the United States, trades less than 1  
4           percent of all bulk cheese sold nationally, and cur-  
5           rently functions as the only price discovery mecha-  
6           nism for bulk cheese throughout the industry;

7           (2) the National Cheese Exchange opinion price  
8           directly influences milk prices paid to farmers be-  
9           cause of its use in the Department of Agriculture's  
10          basic formula price under Federal milk marketing  
11          orders;

12          (3) opinion prices at the National Cheese Ex-  
13          change influence the price for much of the bulk  
14          cheese bought and sold in the United States and di-  
15          rectly or indirectly influences the price of milk paid  
16          to producers throughout the United States;

17          (4) the National Cheese Exchange is a thinly  
18          traded, illiquid, and highly concentrated market that  
19          is increasingly volatile;

20          (5) a report issued by the University of Wiscon-  
21          sin and funded by the United States Department of  
22          Agriculture concluded that the National Cheese Ex-  
23          change is vulnerable to price manipulation;

24          (6) the thin nature of the National Cheese Ex-  
25          change and the characteristics of that market that

1       may facilitate price manipulation have led to wide-  
 2       spread producer concern about the validity of prices  
 3       at the National Cheese Exchange; and

4               (7) it is in the national interest to ensure that  
 5       prices on cash markets that directly and indirectly  
 6       affect milk prices are determined in the most com-  
 7       petitive manner practicable and to improve price dis-  
 8       covery for milk and other dairy products.

9   **SEC. 3. BASIC FORMULA PRICE.**

10       Section 143(a) of the Agricultural Market Transition  
 11   Act (7 U.S.C. 7253(a)) is amended by adding at the end  
 12   the following:

13               “(5) NATIONAL CHEESE EXCHANGE.—

14               “(A) IN GENERAL.—In carrying out this  
 15       subsection and section 8c(5) of the Agricultural  
 16       Adjustment Act (7 U.S.C. 608c(5)), reenacted  
 17       with amendments by the Agricultural Market-  
 18       ing Agreement Act of 1937, the Secretary shall  
 19       not, directly or indirectly, use a price estab-  
 20       lished on the National Cheese Exchange to de-  
 21       termine the basic formula price for milk or any  
 22       other milk price regulated by the Secretary.

23               “(B) REGULATIONS.—Not later than 60  
 24       days after the date of enactment of this para-  
 25       graph, the Secretary shall review and amend

the applicable regulations promulgated by the Secretary to ensure that the regulations comply with subparagraph (A).

“(C) EFFECT ON FURTHER REVISION.—

Subparagraph (B) shall not preclude a further revision to, or replacement of, the basic formula price under this subsection or section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, except that the revision or replacement shall be consistent with subparagraph (A).”.

**SEC. 4. DAIRY PRICE DISCOVERY AND REPORTING SYSTEM.**

Section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) is amended by adding at the end the following:

“(o) DAIRY PRICE DISCOVERY AND REPORTING SYSTEM.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop a price discovery system for raw milk, bulk cheese, and other dairy products in order to facilitate orderly marketing conditions.

“(2) ADMINISTRATION.—In carrying out paragraph (1), the Secretary shall—

1           “(A) collect and disseminate, on a weekly  
2 basis, statistically reliable information, obtained  
3 from all cheese manufacturing areas in the  
4 United States on prices and terms of trade for  
5 spot and forward contracts, reported separately,  
6 transactions involving bulk cheese, including in-  
7 formation on the national average price and re-  
8 gional average prices for bulk cheese sold  
9 through spot and contract transactions;

10           “(B) provide technical assistance to any  
11 person, group of persons, or organization seek-  
12 ing to organize a cash market alternative to the  
13 National Cheese Exchange that the Secretary  
14 believes will improve price discovery; and

15           “(C) not later than 180 days after the date  
16 of enactment of this subsection—

17           “(i) in cooperation with the Commod-  
18 ity Futures Trading Commission, conduct  
19 a study and report to Congress on means  
20 of encouraging improved volume in futures  
21 trading for milk, bulk cheese, and other  
22 dairy products; and

23           “(ii) conduct a study and report to  
24 Congress on the feasibility and desirability

1 of the creation of an electronic exchange  
 2 for cheese and other dairy products.

3 “(3) CONFIDENTIALITY.—All information pro-  
 4 vided to, or acquired by, the Secretary under para-  
 5 graph (2)(A) shall be kept confidential by each offi-  
 6 cer and employee of the Department of Agriculture,  
 7 except that general weekly statements may be issued  
 8 that are based on the information and that do not  
 9 identify the information provided by any person.”.

10 **SEC. 5. OVERSIGHT OF CASH MARKETS AFFECTING FED-**  
 11 **ERAL MILK MARKETING ORDERS.**

12 Section 8c of the Agricultural Adjustment Act (7  
 13 U.S.C. 608c), reenacted with amendments by the Agricul-  
 14 tural Marketing Agreement Act of 1937, is amended by  
 15 adding at the end the following:

16 “(20) OVERSIGHT OF CASH MARKETS AFFECT-  
 17 ING FEDERAL MILK MARKETING ORDERS.—

18 “(A) DEFINITION OF NONCOMPETITIVE  
 19 PRACTICE.—In this paragraph, the term ‘non-  
 20 competitive practice’ means an action or meas-  
 21 ure that involves engaging in a course of busi-  
 22 ness or act for the purpose or with the effect  
 23 of—

24 “(i) manipulating or controlling a  
 25 price on a cash market that affects the

1 price of milk regulated under an order is-  
2 sued under this section;

3 “(ii) creating a monopoly in the ac-  
4 quiring, buying, selling, or dealing in a  
5 product; or

6 “(iii) restraining commerce.

7 “(B) GENERAL RULE.—In order to ensure  
8 fair trade practices and orderly marketing con-  
9 ditions for milk and milk products under this  
10 section, the Secretary shall prohibit non-  
11 competitive practices on a cash exchange for  
12 milk, cheese, and other milk products that the  
13 Secretary finds affects or influences the price of  
14 milk regulated under an order issued under this  
15 section.

16 “(C) OTHER AGENCIES AND STATES.—  
17 This paragraph shall not affect the authority of  
18 the Federal Trade Commission, Commodity Fu-  
19 tures Trading Commission, Department of Jus-  
20 tice, any other Federal agency, or any State  
21 agency to regulate a noncompetitive practice de-  
22 scribed in subparagraph (B).

23 “(D) ENFORCEMENT.—The enforcement  
24 provisions of sections 203, 204, and 205 of the  
25 Packers and Stockyards Act, 1921 (7 U.S.C.

1           193, 194, 195) shall apply, to the extent prac-  
2           ticable (as determined by the Secretary), to this  
3           paragraph.”.

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